

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
The Proposed Extension of Part 4 of the	)	PS Docket No. 11-82
Commission's Rules Regarding Outage	)	
Reporting to Interconnected Voice Over	)	
Internet Protocol Service Providers and	)	
Broadband Internet Service Providers	)	

**REPLY COMMENTS**

Sprint Nextel Corporation ("Sprint") hereby respectfully submits its reply to comments filed in response to the above-captioned Notice of Proposed Rulemaking ("NPRM") relating to the Federal Communications Commission's ("Commission" or "FCC") proposed extension of the Part 4 Outage Reporting requirements to providers of Voice over Internet Protocol ("VoIP") and broadband Internet service providers ("ISP").

While Sprint acknowledges the Commission's stated purpose of obtaining outage information in order to minimize future outages and maintain access to emergency services is laudable, Sprint remains unconvinced that imposing mandatory reporting obligations patterned on the existing Part 4 Rules on VoIP providers and ISPs is the appropriate action for the Commission to achieve this goal. Like the vast majority of commenting parties in this proceeding, Sprint asserts the need for mandatory reporting is questionable because broadband networks are resilient, providers are already motivated through competitive market forces to ensure that networks operate without significant outages, and, it is doubtful whether subjecting ISPs and VoIP providers to a Part 4 reporting regime will yield meaningful and useful data. At a minimum, and as other commenting parties have suggested, the Commission should work closely with industry and standards groups to closely examine the complexities of measuring

outages on VoIP and broadband networks and determine if a reporting system to provide meaningful information is even feasible. Should the FCC require any type of outage reporting, the information collected should be considered confidential and be presumptively protected from public disclosure.

As Sprint emphasized in its initial comments, because broadband networks are reliable and resilient, the need for mandatory reporting obligations to ensure outages are minimized is questionable. *See* Sprint's Comments at 5-6. Other commenters agree. For example, CTIA explains that "[t]he unique nature of Internet traffic and the manner in which broadband networks are deployed to handle such traffic means that facility disruptions will have limited, if any, impact on an end user." Comments of CTIA – The Wireless Association ("CTIA") at 4; *See also* Comments of MetroPCS Communications, Inc. ("MetroPCS") at 10 ("Given the "self-healing" nature of the Internet, it is both burdensome and pointless to spend time and resources to prepare reports for broadband "outages" that, in reality, result in no loss of connectivity."); Comments of The National Cable & Telecommunications Association ("NCTA") at 5 ("With these redundancies in place, the network is designed to ensure routing and rerouting of information automatically in a manner that minimizes disruptions, congestion and failures in connectivity."); *See also* Comments of United States Telecom Association ("USTelecom") at 2-3; Comments of Verizon and Verizon Wireless ("Verizon") at 11-12.

In addition, as Sprint and others point out, in order to remain competitive, providers of broadband services have every motivation to ensure minimal service interruptions. *See* Comments of CTIA at 6 ("Quality of services and reliability of networks have become important competitive differentiators between providers of Internet services. Simply put, there is no incentive that the Commission could provide that would be greater than a service provider's

existing incentive to maintain consumer confidence in its networks.”); Comments of MetroPCS at 7 (“... the market already provides the incentives for providers to provide the highest possible level of Internet access uptime – their very existence depends on it.”); *See also* Comments of American Cable Association (“ACA”) at 2; Comments of USTelecom at 3; Comments of XO Communications, LLC (“XO”) at 2-3.

The Massachusetts Department of Telecom and Cable (“MDTC”) argues that “By extending outage reporting requirements to interconnected VoIP providers and broadband ISPs, the FCC may better enforce existing E-9-1-1 obligations and analyze root causes of outages, which will improve the overall communications network performance.” Comments of MDTC at 3. It is far from clear, based on the record, however that extending the outage reporting requirements to interconnected VoIP providers and broadband ISPs will generate useful data that can be used to analyze root causes of outages.

Instead, the record indicates that information obtained if the Part 4 rules are extended to VoIP and broadband Internet access services would not likely provide an accurate picture of outages. Thus, as XO notes “... [the] failure of any specific facility within an IP-based broadband network typically does not correlate to end user impact the way a failure in a circuit-switched network can. Therefore, the data gathered from the proposed outage reporting requirements likely could not be relied upon to draw accurate and complete conclusions about end user impact.” Comments of XO at 3. Similarly, MegaPath Inc. (“MegaPath”) explains that, “[r]equiring a report whenever the backbone experiences some service degradation is overly inclusive and will not yield meaningful data or lead to discussions of the root causes for an outage.” Comments of MegaPath at 8. And, Level 3 Communications, LLC (“Level 3”) states, “there are significant complications attached to extending outage reporting requirements to

broadband Internet access and Internet backbone service providers and that imposing such obligations would not provide the Commission with useful data to assist it in protecting America's critical infrastructure, particularly as applied to Internet backbone providers." Comments of Level 3 at 4.

Moreover, the Commission's statutory authority to even to impose the Part 4 outage reporting requirements on retail VoIP and broadband service providers is unresolved. As ACA observes, the Commission has yet to determine the regulatory regime to be applied to VoIP services and its authority to impose requirements based on Title II of the Act to broadband Internet access providers has been questioned. Comments of ACA at 4. *See also* Comments of AT&T Inc. at 1-9; Comments of CTIA at 12-16; Comments of CenturyLink at 24-27. Recent decisions raise questions concerning the Commission's authority to regulate certain aspects of broadband Internet service, and these questions should be addressed before the Commission moves forward with its proposed requirements in this proceeding. *See Comcast Corp. v. FCC*, 49 CR 1226 (D.C. Cir. 2010); *Preserving the Open Internet Broadband Industry Best Practices, Report and Order*, 25 FCC Rcd 17905 (2010). In any event, "[m]andatory outage reporting requirements on wireless VoIP and Internet service providers would impose significant, unnecessary, and wasteful burdens on the broadband industry, in a manner inconsistent with the stated goals of the Obama Administration." CTIA Comments at 5. In short, the FCC should abandon its efforts to subject VoIP providers and broadband ISPs to Title 4 outage reporting regulation.

In their joint comments, the National Association of State Utility Consumer Advocates ("NASUCA") and the New Jersey Division of Rate Counsel ("NJ") (collectively "NASUCA/NJ") argue that, "The FCC has already established a precedent of applying

emergency-related obligations to VoIP providers: Since 2005, interconnected VoIP providers have been required to provide 9-1-1 capabilities to their customers.” Comments of NASUCA/NJ at 5. Sprint disagrees with NASUCA/NJ’s position that the Commission’s actions with respect to 9-1-1 capabilities for VoIP creates a precedent for extending outage reporting requirements to VoIP providers and ISPs. While the Commission has extended 9-1-1 requirements to interconnected VoIP providers, the Commission’s proposed outage requirements would require reporting of general outages and would not be limited to just 9-1-1 outages. In addition, the proposed rules would extend not only to VoIP providers, but also to broadband ISPs, which raises unique concerns.

NASUCA/NJ state that, “The rationale for the existing outage reporting system clearly applies equally to VoIP providers and broadband ISPs. The use of technology in no way alters the importance of a reliable, resilient, and secure network.” Comments of NASUCA/NJ at 4. Sprint disagrees. The technology associated with VoIP and ISP services is an important consideration in this proceeding. The complexity of the networks involved raises unique concerns that were not part of the Commission’s original Part 4 proceeding, and Sprint asserts it is not appropriate to use the existing Part 4 outage reporting criteria as the basis for reporting requirements on ISPs and VoIP providers.

If, contrary to Sprint’s position here as well as the record in this proceeding, the Commission determines that VoIP and broadband Internet access should be required to report outages, Sprint urges the Commission to proceed cautiously. Indeed, given the complexities of the networks involved, the Commission should work closely with the industry and standards groups not only to learn how VoIP providers and broadband ISPs operate their networks “to guard against outages” and “whether there are recurring issues that rise to the level of the need

for a reporting regime,” but also to develop reasonable reporting thresholds and timelines. Comments of NTCA at 16.

Sprint agrees with other commenters that argue outage reports should only be required when there is a total loss of service, rather than just a degradation in performance quality. *See* Comments of T-Mobile at 12 (“The reports also should be filed only where there has been a failure within the provider’s control that results in the total inability to utilize the network, not where there has been a degradation of service.”); Comments of CenturyLink at 6 (“...CenturyLink strongly believes that the definition of an interconnected VoIP outage must be limited to the complete loss of service or connectivity.”); *See also* Comments of CTIA at 8-9; Comments of Time Warner Cable Inc. at 5.

Sprint also agrees with commenting parties which assert, to the extent the Commission decides to extend the outage reporting requirements to VoIP and broadband ISPs, any reports submitted should receive confidential treatment. *See* Comments of T-Mobile at 12; Comments of CenturyLink at 22-23; Comments of ATIS at 19. Sprint strongly disagrees with commenting parties who argue that outage reporting information should not be given confidential treatment. NASUCA/NJ argue that confidential treatment of outage reporting is contrary to the public interest and, because such information impacts consumers and society in general, it should be made public. Comments of NASUCA/NJ at 12. Any information that service providers submit regarding outages on their networks will likely reveal sensitive commercial information as well as information about facilities that, if made publicly available, could jeopardize the security of the national telecommunications infrastructure. In its 2004 decision adopting the existing Part 4 requirements, the Commission determined that outage information should be treated as presumptively protected from public disclosure under the Freedom of Information Act (“FOIA”)

due to the presumptive likelihood of substantial competitive harm from disclosure of information in outage reports. *New Part 4 of the Commission's Rules Concerning Disruptions to Communications, Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 16830 (2004) ("Part 4 R&O and FNPRM") at par. 45. In addition, the Commission stated, "Accordingly, the potential consumer benefits that we pointed to over a decade ago as a public interest factor weighing against routine treatment of outage reports as confidential information, are now substantially outweighed by the potential harm to the public and national defense that might result from disclosure." *Part 4 R&O and FNPRM* at par. 45. Circumstances have not changed since the adoption of the existing Part 4 Rules, and the same concerns that weighed in favor of confidential treatment in that proceeding are relevant with respect to any outage reporting information that may be collected as a result of this proceeding.

For the reasons stated herein, and as discussed in Sprint's initial Comments in this proceeding, Sprint recommends that the Commission forgo imposing the proposed outage reporting requirements on VoIP providers and broadband ISPs.

Respectfully submitted,

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